(3)

No. 04-553

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SYLVIA SIERRA,

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,

Respondent.

On Petition for Writ of Certiorari to the District Court of Appeals, Second District, Lakeland, Florida

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Due Process of Law was violated in an Eminent Domain Case when the Trial Court refused to grant the Landowner's request for a continuance in order to employ a replacement attorney to represent her in the trial?

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The decision of the Second Circuit Court of Appeals of Florida (the Court of last resort under Art. V, Section 3(b) of the Florida Constitution) should not be allowed to stand. The case is a case of first impression on the question of whether due process of law was violated in an eminent domain case when the trial court refused to grant the landowner's request for a continuance made four (4) days prior to trial, as well as on the date of trial, in order to employ a replacement attorney to represent her in the trial. The Petitioner represented to the court that she had been unable to find an attorney who would

take her case and that she was not qualified to represent herself and did not want to represent herself.

Without a hearing to learn the basis of Petitioner's problem in her efforts to employ counsel, and without a statement of any inconvenience to the court in granting a motion for a continuance, the court arbitrarily insisted that the case proceed to trial without Petitioner being represented by counsel.

Petitioner was a sixty (60) year old woman who was hard of hearing, was not an attorney, was unfamiliar with the law and the court procedures, and who did not have a value expert for the value-determining phase of this eminent domain case. After a four (4) day trial, the jury returned a verdict of $190,000.00 in this case where the Respondent had previously made an offer of judgment of $503,000.00.

The Constitution of the State of Florida, Article X, Section 6(a), Eminent Domain, provides that the landowner is entitled to "full compensation" for private property taken for a public purpose.

Petitioner argues that the assistance of counsel was necessary for her to receive the "full compensation" to which she was entitled under the Constitution of the State of Florida, and the "just compensation" to which she was entitled under the Constitution of the United States.

I. REPLY TO RESPONDENT'S OPPOSITION TO THE WRIT

The Respondent, State of Florida Department of Transportation has not articulated sound reasons that certiorari should be denied. In fact, the case primarily relied on by the Respondent, *Morris v. Slappy*, 461 U.S. 1, 11-12, 103 S.Ct. 1610, 1616, 75 L. Ed 2d 610 (1983), contains several pages of facts that the Court weighed in determining whether or not the petitioner in that case had been denied his Sixth Amendment right to counsel when appointed counsel was substituted

shortly before his trial. This balancing of the interests and risks is very similar to the one that Petitioner Sierra argues was not conducted in her case but which is required by the case of *Mathews v. Eldridge*, 424 U.S. 319 (1976).

It is the total lack of an inquiry as to why Petitioner was having trouble employing new counsel and a total lack of any factors articulated by the court as to why another continuance would inconvenience the court that creates "an unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay'" *Morris*, 461 U.S.1 at 11-12.

The action of the trial court in putting Ms. Sierra to trial without the assistance of counsel and without considering the balancing factors required by *Mathews v. Eldridge, id.* and *Morris v. Slappy, id.* meets the test that denial of a continuance will be upheld unless it is "so arbitrary as to violate due process." *Ungar v. Sarafiti*, 376 U.S. 575 (1964). The facts of the *Ungar* case cited by Respondent in their Response, however, are vastly differently from the *Sierra* case. The charge of criminal contempt in the *Ungar* case revolved around one statement made by Mr. Ungar. "Furthermore, the motion for a continuance to hire counsel and prepare a defense was not made until the day of the scheduled hearing and Ungar himself was a lawyer familiar with the court's practice of not granting adjoinments." *Ungar, id.* at 590.

Petitioner did not undervalue the government interest at stake as stated by the Respondent. Neither the Respondent nor the Court points to any facts or scheduling problems that would inconvenience the Respondent or the Court in granting Petitioner another continuance in order to locate and employ replacement counsel. Petitioner's request was not motivated by a desire to delay a trial since she could not receive full payment for her property until the case was concluded. The problem that Petitioner faced when attempting to employ replacement counsel after her third attorney, who was allowed by the Court to withdraw, had been anticipated by

counsel for Respondent when he objected to the Court allowing Petitioner's attorney to withdraw, stating that Ms. Sierra might thereafter have trouble getting an attorney and the expert witnesses that she wanted.

There is no problem with Ms. Sierra wanting an attorney that understood valuation of property located in a National Historic Landmark District. Under the Florida Constitution, Petitioner was entitled to "full compensation" for her property, not merely "just compensation." In weighing whether or not to grant another continuance, the trial court was required to consider this factor. In order to gain "full compensation," Petitioner needed all the assistance and advantage that was reasonably available, and it is obvious from her Petition that she did not desire to, and was not capable of, representing herself, and that the assistance of counsel was necessary for her to receive due process of law. For the purposes of due process, there is no difference in the "right to be represented by counsel" and "the necessity to be represented by counsel." The case of *Rex Investigative & Patrol Agency, Inc. v. Collura*, 329 F. Supp. 696 (E.D.N.Y. 1971) is not controlling on Respondent's attempted distinction since there is no Supreme Court case cited in *Rex* as authority for the distinction made in that case.

II. ALTERNATIVELY, CERTIFY CASE TO THE SUPREME COURT OF FLORIDA

Since the case is a case of first impression on the issue raised regarding due process in an eminent domain case and the effect thereon by the "full compensation" requirement of the Florida Constitution, and since there is no written opinion by the Florida Second District Court of Appeals, there was neither Florida Constitutional nor procedural basis for Petitioner to appeal to the Supreme Court of Florida. The Supreme Court of Florida, however, may review a question of law certified to it by the Supreme Court of the United States

"which is determinative of the cause and for which there is no controlling precedent of the Supreme Court of Florida." Constitution of the State of Florida, Article V, Section 3(b)(6).

If this Honorable Supreme Court cannot justify granting certiorari for its review under the due process clause of the United States Constitution, Fifth and Fourteenth Amendments, then, as alternative relief, Petitioner requests that the case be certified to the Supreme Court of Florida for its review and opinion.

CONCLUSION

The Court should grant the petition and directly address the application of the Due Process Clause to the facts of this case. Alternatively, this Court should certify the questions of law raised in the Petition, which is determinative of the cause and for which there is no controlling precedent of the Supreme Court of Florida, to the Supreme Court of Florida for its review and opinion.

Respectfully submitted,

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